

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRANDON M. WILBORN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 18-3597
	:	
WILLIAM BARR,	:	
Attorney General of the United States,	:	
	:	
REGINA LOMBARDO,	:	
Acting Director, Bureau of Alcohol,	:	
Tobacco, Firearms and Explosives,	:	
	:	
CHRISTOPHER WRAY,	:	
Director of the Federal Bureau	:	
of Investigation,	:	
	:	
and	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Defendants.	:	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S CORRECTED
NOTICE OF SUPPLEMENTAL AUTHORITY**

On December 13, 2019, plaintiff Brandon Wilborn filed a corrected notice of supplemental authority (Dkt. No. 31) in which he states that he was improperly denied a federal firearms license on the basis of his Section 302 commitment. Wilborn claims that this denial contravenes the Court's August 5, 2019 order granting summary judgment in his favor. The denial was caused by an oversight by a third party, the Pennsylvania State Police (PSP), which is responsible for modifying Wilborn's Section 302 mental health record. The clerical error has now been corrected.

The PSP is responsible for maintaining—i.e., adding or removing—Pennsylvania Section 302 mental health records from the National Instant Criminal Background Check System (NICS). On August 19, 2019, the FBI advised the PSP of the Court’s order granting summary judgment in favor of Wilborn. *See* Email from Teresa Henderson (FBI) to Lt. Bryan Paulshock (PSP) (and other recipients), Aug. 19, 2019 (attached at Exhibit 1). The FBI advised the PSP that Wilborn’s NICS record should be modified so that Wilborn’s NICS mental health record would no longer trigger a federal firearms prohibition. *Id.* The PSP acknowledged receipt of the FBI’s email on August 29 and indicated that the PSP anticipated removing Wilborn’s prohibiting record “shortly.” *Id.*

An inquiry by undersigned counsel revealed that the PSP did not, in fact, remove Wilborn’s prohibiting record from NICS. As a result, Wilborn’s recent application triggered an automatic denial. The denial was caused by the PSP’s failure to remove from NICS the prohibiting Section 302 record. Undersigned counsel understands that this administrative error has been corrected.

We respectfully suggest that, in the future, Wilborn first notify undersigned counsel about any perceived violation before seeking the Court’s assistance. Counsel for Wilborn did not notify undersigned counsel that Wilborn had applied for a federal firearms license and received a denial, nor that he intended to file this notice of supplemental authority. While he was under no obligation to do so, we previously discussed with him the complicated administrative logistics involved in

restoring Wilborn's federal firearms eligibility. A telephone call could have allowed the parties an opportunity to identify and resolve the PSP's clerical issue more efficiently.

Respectfully submitted,

WILLIAM M. McSWAIN
United States Attorney

s/ Gregory B. David/srb
GREGORY B. DAVID
Assistant United States Attorney
Chief, Civil Division

s/ David A. Degnan
DAVID A. DEGNAN
Assistant United States Attorney
615 Chestnut St., Suite 1250
Philadelphia, Pennsylvania 19106
(215) 861-8522
david.degnan@usdoj.gov

Date: December 10, 2019

CERTIFICATE OF SERVICE

I certify that the foregoing memorandum was filed electronically and is available for viewing and downloading via the Court's ECF system.

s/ David A. Degnan
DAVID A. DEGNAN
Assistant United States Attorney

Date: December 10, 2019